

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ARMANDO JAIMEZ
(Claimant)

PRECEDENT
BENEFIT DECISION
NO. P-B-486
CASE NOS. 98-12486
98-12487

SSA No.

SALVADORE PLACENCIA
(Employer)

OFFICE OF APPEALS NOS. S-55159, S-55160

REM-OP

The claimant appealed from the decisions of the administrative law judge which dismissed the claimant's appeals on the basis that a summary judgment in a judicial proceeding had been obtained and any decision issued by the Appeals Board would be moot.

Pursuant to section 5107, Title 22, California Code of Regulations, these appeals are consolidated for consideration and decision as the facts and circumstances are the same or similar and no substantial right of any party will be prejudiced.

STATEMENT OF FACTS

On December 19, 1991, the Employment Development Department (EDD) mailed a notice of determination to the claimant holding he was not entitled to full unemployment insurance benefits for the week ending September 28, 1991, under section 1279 of the Unemployment Insurance Code on the grounds the claimant had

excessive earnings for that week. A second notice of determination/ruling was mailed to the claimant on December 19, 1991 holding he was disqualified for benefits beginning September 22, 1991 under code section 1256 on the grounds the claimant was discharged for willfully disregarding his employer's interests. The claimant was also disqualified for benefits under code section 1257(a) beginning December 15, 1991 until he filed a claim for benefits in each of seven weeks when otherwise eligible on the grounds the claimant made a willful false statement. A notice of determination/ruling was mailed to the employer on December 19, 1991, holding its reserve account would not be subject to benefit charges.

On December 26, 1991, a notice of overpayment was mailed to the claimant holding he had been overpaid benefits in the amount of \$705 (at the rate of \$141 for each of the five weeks ending October 26, 1991), and that he was liable for repayment plus a 30 percent penalty assessment in the amount of \$211.50 under code sections 1375 and 1375.1. The grounds for the notice of overpayment were that the claimant was paid benefits before it was known that he was discharged under disqualifying conditions and that he had excessive earnings. A second notice of overpayment was issued the same date holding the claimant had been overpaid benefits in the amount of \$282 (for the two weeks ending November 30, 1991) and that he was liable for repayment plus a 30 percent penalty assessment in the amount of \$84.60 under code sections 1375 and 1375.1. All notices to the claimant were mailed to a post office box in Clarksburg, California.

On March 24, 1993, EDD obtained a summary judgment against the claimant from the Municipal Court of the County of Sacramento in Case No. 93C02485 for the amount of \$1,161.98 for an alleged overpayment of \$984.10 plus fees of \$9 and \$80, and interest of \$88.88.

On May 13, 1998, the claimant filed a letter of appeal stating he did not know why he was being charged for an overpayment and that the first notice of any overpayment he received was on May 7, 1998. The claimant provided a Sacramento address. Two case numbers were assigned to the claimant's appeals. Without a hearing, two decisions were issued by an administrative law judge on July 27, 1998, holding that because of the summary judgment, any decision rendered by the Appeals Board relative to the claimant's liability for the overpayments would be moot. The administrative law judge dismissed the appeals on this basis. The employer was not listed as a party on either decision.

On appeal to this Board, the claimant disagrees he was overpaid benefits and restates he did not receive any notice of any overpayment until shortly before filing his appeal.

REASONS FOR DECISION

Issues under the following statutes were raised by the claimant's appeals to the administrative law judge.

An appeal from a determination must be filed within 20 days of mailing or personal service of the notice. The time to appeal may be extended for good cause, which includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect. (Unemployment Insurance Code, section 1328.)

An appeal from a notice of overpayment must be filed within 20 days of mailing or personal service of the notice. The time to appeal may be extended for good cause, which includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect. (Unemployment Insurance Code, section 1377.)

Any person who is overpaid unemployment insurance benefits is liable for repayment unless the overpayment was not due to fraud, misrepresentation or willful nondisclosure, was received without fault, and its recovery would be against equity and good conscience. (Unemployment Insurance Code, section 1375(a).)

If an individual was overpaid benefits because the individual made a willful false statement with actual knowledge thereof or withheld a material fact, the director shall assess against the claimant an amount equal to 30 percent of the overpayment amount. (Unemployment Insurance Code, section 1375.1.)

Section 1279 of the Unemployment Insurance Code provides, in part, an unemployed individual who works part-time in a week shall be paid unemployment benefits equal to the weekly benefit amount less the smaller of the following:

- (1) The amount of wages in excess of \$25;
- (2) 75 percent of the amount of wages during that week.

An individual is disqualified for benefits if the individual left the most recent work voluntarily without good cause or the individual was discharged for misconduct connected with the most recent work. (Unemployment Insurance Code, section 1256.)

An employer's reserve account may be relieved of benefit charges if the claimant left the employer's employment voluntarily without good cause or was discharged for misconduct. (Unemployment Insurance Code, sections 1030 and 1032.)

An individual is disqualified for benefits if, for the purpose of obtaining benefits, he or she either willfully made a false statement or representation, with actual knowledge of the falsity of the statement or representation, or willfully failed to report a material fact. (Unemployment Insurance Code, section 1257(a).)

The administrative law judge did not decide any of the issues in these cases involving the code sections cited above since he was of the opinion that any decision would be moot. This raises the issue of whether the doctrine of res judicata or collateral estoppel automatically applies to our proceedings when a summary judgment has been obtained against a claimant with an outstanding overpayment so that any appeal of the overpayment and related issues should be dismissed. In our view, neither res judicata nor collateral estoppel should automatically be applied in such cases for the following reasons.

The doctrine of res judicata gives conclusive effect to a former judgment and subsequent litigation involving the same controversy or cause of action. (Witkin, California Procedure, Volume 7, Judgment, section 280.)

Collateral estoppel may be applied in subsequent litigation between the same parties involving a different controversy or cause of action. It is conclusive on issues actually litigated between the parties to the former action. (Witkin, California Procedure, Volume 7, Judgment, section 281.)

Because the summary judgment did not involve the same merits of the issues raised by the claimant's appeals, it is the doctrine of collateral estoppel that is relevant to this case.

In Precedent Decision P-T-437, the Appeals Board restated the following test in determining whether collateral estoppel should be applied in proceedings before this Board:

1. Is the issue necessarily decided at the previous proceeding identical to the one which is sought to be relitigated,
2. Did the previous proceeding result in a final judgment on the merits, and
3. Was the party against whom collateral estoppel is asserted a party or in privity with a party at the prior proceeding. (Precedent Decision P-T-437.)

In Precedent Decision P-B-408, the Appeals Board held that the doctrine of collateral estoppel is applicable in unemployment insurance hearings as to findings of fact made by other administrative bodies only when the prior decision was rendered by an agency which has constitutional or statutory authority to perform an adjudicatory function; when that decision has become final before the date of the unemployment insurance hearing; and, when application of the doctrine will not work an injustice upon the party against whom the doctrine is invoked. It was pointed out that "Inherent in a finding of an absence of injustice would be a determination that the parties received due notice of the prior hearing, that adequate opportunity was given the parties to present their case in a comprehensive manner, that the opportunity to be represented by counsel was afforded, and that each party was permitted to present and examine witnesses."

The summary judgment issued in this case only relates to the overpayment aspects of this matter. Clearly there has been no prior proceeding or decision on the issues raised under code sections 1328, 1377, 1279, 1256, 1030, 1032 or 1257(a). Accordingly, collateral estoppel does not render a decision on these issues moot.

With respect to the overpayment issues, we look to the statute providing for summary judgment and related procedures to resolve whether application of collateral estoppel is appropriate.

Section 1379 of the Unemployment Insurance Code provides:

"The director, subject to this article, may do any or all of the following in the recovery of overpayments of unemployment compensation benefits:

"(a) File a civil action against the liable person for the recovery of the amount of the overpayment within one year after any of the following, or, in cases where the individual has been overpaid benefits due to fraud, misrepresentation, or nondisclosure as described in Section 1375.1, within three years of any of the following:

"(1) The mailing or personal service of the notice of overpayment determination if the person affected does not file an appeal to an administrative law judge.

"(2) The mailing of the decision of the administrative law judge if the person affected does not initiate a further appeal to the appeals board.

"(3) The date of the decision of the appeals board.

"(b) Initiate proceedings for a summary judgment against the liable person. However, this subdivision applies only where the director has found, pursuant to Section 1375, that the overpayment may not be waived because it was due to fraud, misrepresentation, or wilful nondisclosure on the part of the recipient. The director may, not later than three years after the overpayment became final, file with the clerk of the proper court in the county from which the overpayment of benefits was paid or in the county in which the claimant resides, a certificate containing all of the following:

"(1) The amount due, including the assessment made under Section 1375.1, plus interest from the date that the initial determination of overpayment was made pursuant to Section 1376.

"(2) A statement that the director has complied with all the provisions of this article prior to the filing of the certificate.

"(3) A request that judgment be entered against the liable person in the amount set forth in the certificate.

"The clerk, immediately upon the filing of the certificate, shall enter a judgment for the State of California against the liable person in the amount set forth in the certificate.

"For the purposes of this subdivision only, an overpayment is final and due and payable after any of the following:

"(A) The liable person has not filed an appeal pursuant to Section 1377.

"(B) The liable person has filed an appeal to the administrative law judge and a decision of an administrative law judge has become final.

"(C) The liable person has filed an appeal to the appeals board and the decision of the appeals board has become final because the liable person has not sought judicial review within the six-month period provided by Section 410.

"(c) Reduce or vacate a summary judgment by filing a certificate to that effect with the clerk of the proper court.

"(d) Offset the amount of the overpayment received by the liable person against any amount of benefits to which he or she may become entitled under this division within six years of the date of mailing or personal service of the notice of overpayment determination."

Since these cases were not set for hearing and a record of what occurred was not made, we are not certain of the specific action that EDD took against the claimant. It appears from the files in these cases, however, that EDD decided to seek recovery of the alleged overpayments under the summary judgment provisions of section 1379(b) of the code.

A reasonable interpretation of the statute is that under code section 1379(b), an overpayment is final only for the limited purpose of allowing EDD to secure a judgment as one means of effecting recovery of an overpayment. Such a judgment is not rendered after litigation of the underlying issues and consequently, in our view, is not a bar to an administrative law judge adjudicating those issues pursuant to an appeal filed by the claimant from EDD's determinations and/or notices of overpayment which is filed within such extended period of time as may be allowed for good cause.

In deciding that a summary judgment obtained under code section 1379(b) does not render a decision on an appeal of an overpayment moot, we point out that the summary judgment proceeding does not give a claimant an assured opportunity to present his or her position on whether an overpayment has been made. As a result, a person could be deprived of benefits without any notice or opportunity to be heard.

Here, the dismissal of the claimant's appeals based upon issuance of a summary judgment obtained by EDD without a hearing denied him due process of law. Due process requires that the claimant be given an opportunity for hearing and decision if good cause is established by the claimant for the delay in filing the appeals. For these reasons, we set aside the decisions of the administrative law judge and remand these cases to an administrative law judge for further proceedings.

At the remanded proceedings, the first issues before the administrative law judge will be whether the claimant had good cause for his delay in filing appeals to EDD's determinations and notices of overpayment. If good cause is not found, the administrative law judge shall dismiss the claimant's appeals and EDD's determinations and notices of overpayment will stand as issued. If good cause is found for the delay, the administrative law judge shall take evidence and issue decisions on the merits of the issues involved in EDD's determinations and notices of overpayment. Should the administrative law judge ultimately decide that the claimant was not overpaid benefits, or was

overpaid a lesser amount than that alleged by EDD in the notices of overpayment, EDD would be able to reduce or vacate the summary judgment in accordance with code section 1379(c).

DECISION

The decisions of the administrative law judge are set aside. The claimant's appeals are reinstated. The cases are remanded to an administrative law judge for hearing and decision as set forth above. The documents previously produced in the course of these proceedings shall be made a part of the record.

Sacramento, California, December 17, 1998.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

LOUIS WM. BARNETT, Chairman

INGRID C. AZVEDO, Vice-Chair

JAMES S. STOCKDALE

PHILIP SCOTT RYAN

ROBERT P. MARTINEZ

RUBEN S. AYALA, Abstaining

REMAND INFORMATION

The Board's decision remands the case to an administrative law judge for appropriate action as set forth in the decision.

The matter is being referred to the Sacramento Office of Appeals at:

*2400 Venture Oaks Way Suite 100
Sacramento CA 95833*

Any future correspondence should be addressed to that office. It is important that you notify the Office of Appeals of any change in your address.